

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

KENDALL ANTHONY KILLMAN,

Case No. 2:24-cv-01337-EJY

Plaintiff,

V.

LELAND DUKEK,
Acting Commissioner of Social Security,
Defendant.

ORDER

Pending before the Court is Plaintiff Kendall Killman's Complaint for Review of Final Decision of the Commissioner of Social Security and his Brief in support thereof. ECF Nos. 6, 16. The Court reviewed Plaintiff's Brief, the Commissioner's Brief in response (ECF No. 18), and Plaintiff's Reply (ECF No. 19). The Court finds as follows.

I. Background

Plaintiff filed an application for a survivor claim of Child Disability Benefits (“CDB”) on November 1, 2019, alleging a disability onset date of January 1, 2015. Administrative Record (“AR”) 250-53. Plaintiff claimed his disability was the result of the following impairments: Ehlers-Danlos Syndrome (“EDS”), scoliosis, fibromyalgia, an occult tethered cord, anxiety, mast cell activation syndrome , depression, postural orthostatic tachycardia syndrome , syringomyelia, and irritable bowel syndrome . AR 278. This claim was denied on April 17, 2020, with the state agency determining that although they found Plaintiff’s condition was severe, “it [was] expected to improve and … [was] not expected to remain severe enough for 12 months in a row to keep [Plaintiff] from working.” AR 112. This finding was based in part on the fact that Plaintiff had recently undergone surgery for his tethered cord and reported significant improvement. AR 103. Plaintiff filed a request for reconsideration alleging his condition had not improved and claiming a new disability onset date of May 31, 2020. AR 114. Plaintiff’s claim was denied again upon reconsideration on April 22, 2022. AR 135-38.

1 Plaintiff filed a written request for a hearing before an Administrative Law Judge (“ALJ”)
 2 on June 2, 2022. AR 139. At this hearing, which took place on April 28, 2023, Plaintiff alleged he
 3 experienced constant pain and fatigue while sitting or standing, requiring him to lie down between
 4 ten to twenty times each day and use a wheelchair outside the home. AR 71-76. Plaintiff noted that
 5 the surgery for his tethered cord and stem cell injections in his knees had resulted in significant
 6 improvements, but that he still experienced severe leg weakness. AR 70, 74. Regarding his mental
 7 health symptoms, Plaintiff stated that he frequently experiences suicidal thoughts, but indicated he
 8 was unwilling to try new medication for anxiety or depression after previously trying Desipramine.
 9 AR 78, 82. The ALJ issued a decision of non-disabled on September 11, 2023. AR 22-45. Plaintiff
 10 submitted a request for review by the Appeals Council, who denied the request on May 22, 2024,
 11 rendering the ALJ’s decision the final decision of the Commissioner. AR 1-4. Plaintiff timely filed
 12 the instant action seeking judicial review of the Commissioner’s decision on July 19, 2024.

13 **II. Standard of Review**

14 The reviewing court shall affirm the Commissioner’s decision if the decision is based on
 15 correct legal standards and the legal findings are supported by substantial evidence in the record. 42
 16 U.S.C. § 405(g); *Batson v. Comm’r Soc. Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004).
 17 Substantial evidence is “more than a mere scintilla. It means such relevant evidence as a reasonable
 18 mind might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S. 389, 401
 19 (1971) (internal citation and quotation marks omitted). In reviewing the Commissioner’s alleged
 20 errors, the Court must weigh “both the evidence that supports and detracts from the
 21 [Commissioner’s] conclusions.” *Martinez v. Heckler*, 807 F.2d 771, 772 (9th Cir. 1986).

22 “When the evidence before the ALJ is subject to more than one rational interpretation, we
 23 must defer to the ALJ’s conclusion.” *Batson*, 359 F.3d at 1198, citing *Andrews v. Shalala*, 53 F.3d
 24 1035, 1041 (9th Cir. 1995). A reviewing court, however, “cannot affirm the decision of an agency
 25 on a ground that the agency did not invoke in making its decision.” *Stout v. Comm’r Soc. Sec.*
 26 *Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006) (internal citation omitted). Finally, the court may not
 27 reverse an ALJ’s decision on account of an error that is harmless. *Burch v. Barnhart*, 400 F.3d 676,
 28 679 (9th Cir. 2005) (internal citation omitted). “[T]he burden of showing that an error is harmful

1 normally falls upon the party attacking the agency's determination." *Shinseki v. Sanders*, 556 U.S.
 2 396, 409 (2009).

3 To establish whether a claimant is disabled under the Act, there must be substantial evidence
 4 that:

5 (a) the claimant suffers from a medically determinable physical or mental
 6 impairment that can be expected to result in death or that has lasted or can be
 7 expected to last for a continuous period of not less than twelve months; and

8 (b) the impairment renders the claimant incapable of performing the work that
 9 the claimant previously performed and incapable of performing any other
 10 substantial gainful employment that exists in the national economy.

11 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999), citing 42 U.S.C. § 423(d)(2)(A). "If a claimant
 12 meets both requirements, he or she is disabled." *Id.*

13 The ALJ employs a five-step sequential evaluation process to determine whether a claimant
 14 is disabled within the meaning of the Act. *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987); 20 C.F.R.
 15 § 404.1520(a). Each step is potentially dispositive and "if a claimant is found to be 'disabled' or
 16 'not-disabled' at any step in the sequence, there is no need to consider subsequent steps." *Tackett*,
 17 180 F.3d at 1098; 20 C.F.R. § 404.1520. The claimant carries the burden of proof at steps one
 18 through four, and the Commissioner carries the burden of proof at step five. *Tackett*, 180 F.3d at
 19 1098.

20 The five steps are:

21 Step 1. Is the claimant presently working in a substantially gainful activity? If so,
 22 then the claimant is "not disabled" within the meaning of the Social Security Act
 23 and is not entitled to disability insurance benefits. If the claimant is not working in
 24 a substantially gainful activity, then the claimant's case cannot be resolved at step
 25 one and the evaluation proceeds to step two. See 20 C.F.R. § 404.1520(b).

26 Step 2. Is the claimant's impairment severe? If not, then the claimant is "not
 27 disabled" and is not entitled to disability insurance benefits. If the claimant's
 28 impairment is severe, then the claimant's case cannot be resolved at step two and
 the evaluation proceeds to step three. See 20 C.F.R. § 404.1520(c).

Step 3. Does the impairment "meet or equal" one of a list of specific impairments
 described in the regulations? If so, the claimant is "disabled" and therefore entitled
 to disability insurance benefits. If the claimant's impairment neither meets nor
 equals one of the impairments listed in the regulations, then the claimant's case
 cannot be resolved at step three and the evaluation proceeds to step four. See 20
 C.F.R. § 404.1520(d).

Step 4. Is the claimant able to do any work that he or she has done in the past? If so, then the claimant is “not disabled” and is not entitled to disability insurance benefits. If the claimant cannot do any work he or she did in the past, then the claimant’s case cannot be resolved at step four and the evaluation proceeds to the fifth and final step. *See* 20 C.F.R. § 404.1520(e).

Step 5. Is the claimant able to do any other work? If not, then the claimant is “disabled” and therefore entitled to disability insurance benefits. *See* 20 C.F.R. § 404.1520(f)(1). If the claimant is able to do other work, then the Commissioner must establish that there are a significant number of jobs in the national economy that claimant can do. There are two ways for the Commissioner to meet the burden of showing that there is other work in “significant numbers” in the national economy that claimant can do: (1) by the testimony of a vocational expert [(“VE”)], or (2) by reference to the Medical-Vocational Guidelines at 20 C.F.R. pt. 404, subpt. P, app. 2. If the Commissioner meets this burden, the claimant is “not disabled” and therefore not entitled to disability insurance benefits. *See* 20 C.F.R. §§ 404.1520(f), 404.1562. If the Commissioner cannot meet this burden, then the claimant is “disabled” and therefore entitled to disability benefits. *See id.*

Id. at 1098–99 (internal alterations omitted).

III. The ALJ’s Decision

At step one, the ALJ determined Plaintiff had not engaged in substantial gainful activity since the alleged onset date of May 31, 2020. AR 24. At step two, the ALJ found Plaintiff suffered from the following severe impairments: EDS, degenerative disc disease of the thoracic, cervical, and lumbar spine, bilateral osteonecrosis of the femur and tibia, autism, depression, and anxiety. AR 25. However, the ALJ found all of Plaintiff’s other claimed impairments were either non-severe or insufficiently represented in the record since June of 2020. *Id.* At step three, the ALJ found that neither Plaintiff’s physical nor mental impairments met or medically equaled the severity of any listed impairments in 20 C.F.R., Part 404, subpt. P, App. 1 (the “Listings”). AR 25-30.

In preparation for step four, the ALJ found that Plaintiff had the following residual functional capacity (“RFC”):

[P]erform light work as defined in 20 CFR 404.1567(b) except the claimant can lift, carry, push and/or pull 20 pounds occasionally and 10 pounds frequently. The claimant can stand and/or walk for 4 hours in an 8-hour workday. The claimant can occasionally operate foot controls with the bilateral feet, and frequently operate hand controls with the bilateral hands. The claimant can occasionally reach overhead, and frequently reach in all other directions, with the bilaterally upper extremities. The claimant can frequently handle, finger, and feel with the bilateral hands. The claimant can occasionally climb ramps and stairs, and never climb ladders, ropes, or scaffolds. The claimant can occasionally stoop, kneel, crouch, or crawl. The claimant can never work at unprotected heights. The claimant can occasionally work around moving mechanical parts, and can occasionally operate

1 a motor vehicle. The claimant can occasionally tolerate work in extreme cold,
2 extreme heat, and around vibration. The claimant can understand, remember, and
3 carry out detailed but not complex tasks. The claimant can frequently interact with
4 supervisors, but only occasionally interact with the public and co-workers.

5 AR 30.

6 In arriving at this RFC determination, the ALJ considered Plaintiff's subjective symptom
7 testimony, including testimony regarding his chronic pain, limited mobility, and suicidal thoughts,
8 and found that Plaintiff's medically determinable impairments could reasonably cause these alleged
9 symptoms. AR 30-37. However, the ALJ determined the alleged intensity, persistence, and limiting
10 effects of the symptoms were not consistent with the medical evidence. *Id.* In particular, the ALJ
11 noted that Plaintiff's pain responded well to medical marijuana, and he was receiving no other
12 treatment for pain. AR 32. The ALJ also noted that the record indicated multiple occasions in which
13 different medical providers had recommended physical therapy, but Plaintiff had never followed
14 through with those recommendations. AR 33-34. The ALJ found the record did not support
15 Plaintiff's testimony that he required a wheelchair as no assistive device for ambulation was ever
16 prescribed. AR 34. Regarding Plaintiff's mental health symptoms, the ALJ noted the record
17 indicated only a single medication being briefly prescribed for depression, with Plaintiff being
18 resistant to attempting other medications and instead reporting positive results with psychotherapy.
19 AR 34-35.

20 The ALJ also considered the medical opinions of: (1) state agency consultants Hala Abdel
21 Aziz, Susan Ribeiro, Mark Short, and Ana Olivares; (2) Plaintiff's treating psychologist and
22 pediatrician Michelle Gravley and Wesley Robertson, respectively; (3) Judith Friedman and
23 Stephanie Punt, psychologists at UCLA; and (4) Jill Silverman, a rheumatologist with New York
24 Physicians. AR 37-41. The ALJ found the opinions of the state consultants to be partially to mostly
25 persuasive, save for that of Dr. Ribeiro, noting that Plaintiff's positive response to treatment coupled
26 with his refusal to attempt physical therapy suggested he was less limited than the reports suggested.
27 AR 38-40. The ALJ also found Drs. Friedman and Punt's report to be partially persuasive, noting
28 that it did not include a function-by-function analysis or describe Plaintiff's limitations in
 vocationally relevant terms. AR 40. The ALJ found the extreme limitations described in Dr.

1 Robertson's opinion to be unpersuasive because they were inconsistent with the relatively
2 unremarkable findings of examinations and Plaintiff's reported improvement with treatment. AR
3 41. The ALJ found Dr. Gravley's written statements unpersuasive because they were not written in
4 functional terms and pertained to Plaintiff's chronic pain, something for which as a psychologist Dr.
5 Gravley did not treat him. AR 37. Finally, the ALJ found Dr. Silverman's opinion to be
6 unpersuasive because it conflicted with the overall record and Plaintiff's self-reported improvement
7 with treatment and ability to focus on hobbies for extended periods. AR 41.

8 The ALJ also considered a letter submitted by Plaintiff's mother, Trudy Para-Killman. The
9 ALJ noted that although Ms. Para-Killman made extreme statements of limitation, she lacked
10 medical training and the record suggested she may not be consistently observing Plaintiff because
11 of her non-profit work. AR 42. The ALJ also noted the record indicated Ms. Para-Killman had
12 repeatedly urged Plaintiff to engage in treatment such as physical therapy, but Plaintiff declined to
13 do so. *Id.*

14 Step four required no findings because Plaintiff has no past relevant work. *Id.* At step five,
15 the ALJ concluded that based on Plaintiff's age, education, work experience, and RFC, there were
16 jobs that Plaintiff could have performed that existed in significant numbers in the national economy.
17 AR 43. The Vocational Expert testified that if Plaintiff were limited to slightly below the light work
18 level, he could perform the following representative occupations: Small Products Assembler (DOT#
19 706.684-022), Inspector (DOT# 559.687-074), and Garment Sorter (DOT# 222.687-014). AR 43.
20 The Vocational Expert also testified that, even if Plaintiff were limited to the sedentary work level,
21 he could still perform the following representative occupations: Table Worker (DOT# 739.687-182),
22 Lens Inserter (DOT# 713.687-026), and Agricultural Sorter (DOT# 521.687-086). *Id.*

23 Based on the above, the ALJ concluded that Plaintiff "has not been under a disability, as
24 defined in the Social Security Act, from May 31, 2020, through the date of this decision." AR 44.
25 Therefore, the ALJ denied Plaintiff's applications for CDB, finding Plaintiff was not disabled under
26 section 223(d) of the Social Security Act through September 11, 2023. AR 45.

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1 **IV. Discussion**

2 Plaintiff's three-page opening brief is divided into three categories: Abuse of Discretion,
 3 Abuse of Power/Bias, and Error of Law. ECF No. 16 at 4-6. Under the Abuse of Discretion heading
 4 Plaintiff asserts the ALJ improperly discounted the medical opinions of Dr. Robertson, his
 5 pediatrician, Dr. Gravley, his psychologist since 2009, and Dr. Friedman, a psychologist with
 6 UCLA. *Id.* at 4. Under the Abuse of Power/Bias heading, Plaintiff asserts the ALJ assigned to his
 7 case only approves between 3-14% of disability claims, which Plaintiff argues "is indicative of a
 8 general bias towards those with disabilities." *Id.* Under the Error of Law heading, Plaintiff cites to
 9 several portions of the administrative record as well as several categories of listed impairments under
 10 Subpart P, Appendix 1. *Id.* at 6. Also under this heading, Plaintiff states that at a previous hearing
 11 the ALJ "ordered [Plaintiff and his mother] out of her courtroom until [he] hired a lawyer," which
 12 Plaintiff argues was unethical. *Id.* Separately, and most importantly to this review, Plaintiff avers
 13 there is additional evidence to support his claim; that is, Plaintiff represents he has been approved
 14 for "PCA hours"¹ for assistance with bathing, grooming, and housekeeping, though he includes no
 15 such evidence in the more than sixty pages of attachments to his brief. *Id.* at 5.

16 A. Abuse of Discretion.

17 Under the current regulations for claims filed after March 27, 2017, an ALJ does not "defer
 18 or give any specific evidentiary weight to any medical opinions." *Cross v. O'Malley*, 89 F.4th 1211,
 19 1214 (9th Cir. 2024) (citing 20 C.F.R. § 416.920c(a)). When assessing the persuasiveness of a
 20 medical opinion, the "most important factors" an ALJ must consider are supportability and
 21 consistency. 20 C.F.R. § 404.1520c(b)(2). When determining the persuasiveness of a medical
 22 opinion based on these factors, an ALJ must still support his/her findings with substantial evidence.
 23 See *Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022). ("[A]n ALJ cannot reject an examining
 24 or treating doctor's opinion as unsupported or inconsistent without providing an explanation
 25 supported by substantial evidence."). Under the substantial evidence standard, an ALJ must
 26 "articulate ... how persuasive" it finds each medical opinion and "explain how [they] considered the

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 28 ¹ Although Plaintiff provides no explanation for this term, the Court surmises from context that PCA likely refers
 to a personal care attendant or assistant.

supportability and consistency factors” in reaching this finding. *Id.* “Supportability means the extent to which a medical source supports the medical opinion by explaining the relevant ... objective medical evidence.” *Id.* at 791-92 (internal quotations omitted). “Consistency means the extent to which a medical opinion is ‘consistent ... with the evidence from other medical sources and nonmedical sources in the claim.’” *Id.* (internal quotations omitted).

In the present case, Plaintiff challenges the ALJ’s discounting the opinions of Wesley Robertson, M.D., Michelle Gravley, Psy.D, and Judith Leone Friedman, Ph.D. However, Plaintiff provides no legal arguments or citations to the record to support this challenge. ECF No. 16 at 4. Rather, Plaintiff generally refers to the education and experience of these medical providers without indicating how their opinions are supported by the record or which portions of the ALJ’s assessment he believes were erroneous. Nonetheless, the Court liberally construes Plaintiff to be arguing the ALJ did not provide an explanation supported by substantial evidence for discounting the opinions of these three medical providers, and considers the ALJ’s discussion of the opinions in sequence.

As the ALJ noted, Dr. Robertson indicated, among other limitations, in an RFC questionnaire that Plaintiff could perform less than the full range of sedentary work and was limited to sitting or standing for less than 2 and half hours per work day. AR 41. The ALJ noted that these severe limitations conflicted with the relatively unremarkable exam findings included in the record, as well as with Plaintiff’s reporting of the effectiveness of medical marijuana in managing his pain. *Id.* The ALJ also found Dr. Robertson’s report did not include any objective findings on examination to support his conclusions, that Dr. Robertson was not a specialist in EDS, and that portions of Dr. Robertson’s report used relatively vague terms rather than vocationally relevant terms. *Id.*

The Court finds these last two observations to be in error. Nothing in the two-page questionnaire cited by the ALJ indicated that Dr. Robertson’s opinion related to EDS or that Dr. Robertson was holding himself out opining on any particular medical diagnosis. AR 1695-96. Instead, Dr. Robertson, an M.D., appears to offer his general medical opinion regarding Plaintiff’s limitations. Thus, the Court finds a lack of specialization in EDS is not relevant to whether Dr. Robertson’s opinion is of any persuasive value. Further, although the ALJ describes Dr. Robertson’s opinion as using vague terms, the Court finds this a particularly odd observation as the “opinion” in

1 question is a pre-prepared form in which Dr. Robertson merely checked boxes to indicate his
2 conclusions regarding Plaintiff's functional capacity. *Id.*

3 Despite finding the ALJ erred in reaching these findings, the same facts also convince the
4 Court that this error is harmless. An ALJ's error is harmless where "it is inconsequential to the
5 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
6 (internal quotation omitted); *see also Marsh v. Colvin*, 792 F.3d 1170 (9th Cir. 2015) (applying
7 harmless error standard when an ALJ ignored the medical opinion of a treating source). Because
8 Dr. Robertson's opinion consists of a two-page form with no objective findings on examination to
9 support the conclusions indicated within, the fact that these conclusions conflicted with the other
10 medical evidence of record, such as normal movement of all four extremities with full strength and
11 improvement with conservative treatment (AR 1267, 1884) provided clear and convincing reasons
12 for discounting Dr. Robertson's opinion. The Court is satisfied that the ALJ's errors with regards to
13 Dr. Robertson's qualifications and supposed use of vague terms did not affect the ultimate outcome.

14 The ALJ's consideration of Dr. Gravley's opinions is limited to two sentences. Specifically,
15 the ALJ says Gravley's written statements are not persuasive because they are not written in
16 functional terms and address Plaintiff's physical pain—an area outside the expertise of a Psy.D. and
17 for which she did not treat him. AR 37. While the fact that the ALJ spent so little time considering
18 the opinion of a medical provider who has treated Plaintiff for several years is concerning, the Court
19 again finds this harmless error. A review of the written statements in question reveals they are
20 narrative reports of Plaintiff's struggles as relayed to Dr Gravley in therapy sessions, rather than
21 opinions on Plaintiff's functional limitations. *See generally*, AR 16-18, 1206-07, 1260-61, 1309-12.
22 While the statements indicate Plaintiff discussed his struggles with EDS and chronic pain during
23 therapy, as well as his past negative experiences seeking treatment, the ALJ correctly notes that Dr.
24 Gravley, as Plaintiff's therapist, did not treat his EDS or chronic pain. Further, while Dr. Gravley
25 mentions Plaintiff's diagnoses of General Anxiety Disorder and Major Depressive Disorder,
26 conditions for which she was actually treating him, she does so in the context of describing his past
27 struggles with the conditions and provides no opinion on how these conditions would limit Plaintiff's
28 ability to function or obtain gainful employment.

1 Although the Court agrees the ALJ could have better explained why Dr. Gravley's written
 2 statements were not useful for the purpose of determining Plaintiff's RFC, the Court finds the
 3 reasons provided by the ALJ are sound. Although Dr. Gravley appears to have treated Plaintiff for
 4 a number of years, as a psychologist, she lacks the expertise to opine on Plaintiff's physical
 5 functional limitations. *See Bollinger v. Barnhart*, 178 Fed.Appx. 745, 746 n. 1 (9th Cir. 2006) (A
 6 treating psychologist's "opinion regarding [claimant]'s physical limitations was beyond her
 7 professional expertise as a Ph. D. psychologist"). Therefore, the ALJ was justified in finding Dr.
 8 Gravley's observations regarding Plaintiff's chronic pain and EDS unpersuasive, when compared to
 9 Dr. Aziz's opinion placing Plaintiff's RFC at slightly below a light work level, which the ALJ found
 10 to be mostly persuasive. AR 37-38 (citing AR 114-127).

11 Further, Dr. Gravley's observations regarding Plaintiff's mental impairments, the conditions
 12 for which she has been treating him, do not appear to be medical opinions the ALJ was required to
 13 consider under 20 C.F.R. § 404.1520c. The regulations define "medical opinion" to mean "a
 14 statement from a medical source about what [a claimant] can still do despite [their] impairment(s)
 15 and whether [the claimant] ha[s] one or more impairment-related limitations or restrictions" in an
 16 enumerated list of functional areas. 20 C.F.R. § 404.1513(a)(2). Dr. Gravley's statements, which
 17 are largely duplicative, provide a general outline of Plaintiff's history of mental health symptoms
 18 and the underlying life stressors she believed were exacerbating them. *See, e.g.*, AR 1206-07, 1311-
 19 12. Not found in any of these statements is any opinion as to how Plaintiff's mental health symptoms
 20 would limit his functioning in a work setting.² Thus, the Court finds Dr. Gravley's statements not
 21 to be medical opinions under the regulations, and the ALJ was not required to assess their
 22 persuasiveness.

24 ² A possible exception to this is Dr. Gravley's statement that Plaintiff "finds it difficult to connect with others" and primarily interacts with others online. AR 15. This could be reasonably construed as a limitation on Plaintiff's ability to interact with supervisors, coworkers, or the public in a work setting. *See* 20 C.F.R. § 404.1513(a)(2)(ii) (listing "responding appropriately to supervision, co-workers, or work pressures in a work setting" as a relevant ability in a medical opinion). However, to the extent the ALJ erred by not considering Dr. Gravley's statements, the Court finds such error to be harmless as the ALJ's RFC determination already limits Plaintiff to occasional interactions with coworkers and the public, which the ALJ justifies with ample citation to his therapy notes and reported hobbies. AR 35-36. The Court finds it unlikely that further consideration of Dr. Gravley's comment regarding connecting with others would have changed the ultimate disability determination.

1 Finally, the ALJ found Dr. Friedman's neuropsychological assessment to be partially
 2 persuasive, noting that Dr. Friedman's diagnoses of dysthymia, generalized anxiety disorder, and
 3 major depressive disorder were consistent with the overall record. AR 40. The ALJ also noted that
 4 Dr. Friedman's findings on exams supported some level of functional restrictions, but did not include
 5 a function by function analysis of Plaintiff's impairments in vocationally relevant terms. *Id.* The
 6 Court finds this was a valid basis for finding Dr. Friedman's report only partially persuasive as
 7 descriptions that do not specify functional limits are not useful in determining a claimant's RFC.
 8 See *Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir. 2020) ("The ALJ found that the doctor's descriptions
 9 of Ford's ability to perform in the workplace as 'limited' or 'fair' were not useful because they failed
 10 to specify Ford's functional limits. Therefore, the ALJ could reasonably conclude these
 11 characterizations were inadequate for determining RFC.") (cleaned up).

12 Based on the foregoing, the Court finds the ALJ's evaluation of the medical opinions of these
 13 providers is supported by substantial evidence. To the extent the ALJ erred in failing to consider
 14 specific portions of any of the above opinions, such error is harmless.

15 B. Abuse of Power/Bias.

16 Plaintiff references, and attaches to his Reply, an online article purporting to show the rate
 17 of approving disability claims of several ALJs stationed in Orland Park, Illinois. ECF No. 19 at 2,
 18 5-12. Plaintiff argues that these figures, which indicate the ALJ in this case has approved only 5%
 19 of applications before her as of November 2024, establish bias and are grounds for reversal. *Id.* at
 20 2. However, statistics of unrelated rulings by themselves do not suffice to establish bias. See *Cope*
 21 v. *Colvin*, Case No. 2:15-cv-01744-JRC, 2016 WL 6439940, at *9 (W.D. Wa. Nov. 1, 2016) ("ALJ
 22 bias cannot be proven by statistical analysis, but rather any ALJ's alleged bias must be judged on a
 23 case by case basis."). Rather, Plaintiff must establish a "conflict of interest or some other specific
 24 reason" to rebut the presumption that an ALJ is unbiased. *Rollins v. Massanari*, 261 F.3d 853, 857-
 25 58 (9th Cir. 2001).

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1 The only evidence of bias specific to this case that Plaintiff offers is the transcript of the
 2 November 22, 2022 hearing,³ which Plaintiff characterizes as showing the ALJ “kicking them out
 3 of the hearing.” ECF No. 16 at 6. However, after reviewing the hearing transcript it is apparent that
 4 the ALJ was acting in Plaintiff’s interest. Statements by Plaintiff and his mother indicated they had
 5 a misapprehension regarding the cost of obtaining representation for the hearing, and the ALJ chose
 6 to postpone the hearing to ensure Plaintiff was fully aware of the availability of free representation
 7 before choosing to proceed *pro se*. ECF No. 17. This was well within the ALJ’s discretion and, in
 8 any event, does not establish bias. *See HALLEX, I-2-3-10(D), 1994 WL 1552640, at *3 (Nov. 25,*
 9 *2024)* (“An ALJ may postpone a hearing before the time set for the hearing, or an ALJ may adjourn
 10 a hearing that is in progress and continue it later.”). Certainly, the opportunity to obtain free
 11 representation at the continued hearing did not prejudice Plaintiff’s application for benefits. The
 12 Court finds Plaintiff fails to establish bias.

13 C. Error of Law.

14 Plaintiff cites to several of the listed impairments in the portion of his brief titled “Error of
 15 Law,” but provides no argument demonstrating how the ALJ’s consideration of these listings were
 16 in error.⁴ ECF No. 16 at 6. For example, Plaintiff cites to Listings 1.00, 11.00, 12.00, and 14.00,
 17 but Plaintiff does not indicate how the ALJ erred when applying these criteria to the facts of his case.
 18 *Id.* Indeed, the ALJ discussed these Listings at length in part three of her analysis, AR 26-30, and
 19 Plaintiff at no point specifies which portion of this analysis contains legal error. Similarly, Plaintiff
 20 references the “2,400+ pages of documentation” in the Administrative Record, but does not direct
 21 the Court to any part of the record that the ALJ either mischaracterized or failed to consider. ECF
 22 No. 19 at 2. While the Court recognizes that Plaintiff is proceeding without counsel, the Court will

23 ³ Plaintiff also attaches a statement from his mother, though it is not clear whether Plaintiff offers this as evidence
 24 of bias or some other purpose. ECF No. 16 at 74. In this statement, Plaintiff’s mother challenges the ALJ’s statement
 25 that “Ms. Para-Killman is … busy herself running a non-profit,” and therefore “is not consistently observing [Plaintiff].”
 26 AR 42. While the Court agrees this comment was unnecessary, it does not establish bias. The ALJ provided sufficient
 27 justification for discounting Ms. Para-Killman’s lay opinion by citing to Plaintiff’s reported daily activities and portions
 28 of the record indicating Plaintiff’s refusal to engage in treatment admittedly encouraged by his mother. *Id.*

23 ⁴ Attached to Plaintiff’s opening brief is a document prepared by Robert Flemming, who represented Plaintiff
 24 before the ALJ, though it is unclear whether Plaintiff intends this to support his argument that the ALJ committed an
 25 error of law. ECF No. 16 at 39-71. The document, which is thirty-three pages long, appears to quote from various
 26 portions of the medical record in no apparent order while providing no legal argument. *Id.* Because Plaintiff provides
 27 no guidance as to how this document establishes legal error on behalf of the ALJ, the Court does not consider it.

1 not undertake a fishing expedition of the voluminous record in this case in an attempt to locate
 2 evidence to support Plaintiff's argument. *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929
 3 (9th Cir. 2003) ("Our circuit has repeatedly admonished that we cannot manufacture arguments for
 4 an appellant Rather, we review only issues which are argued specifically and distinctly in a
 5 party's opening brief.") (internal quotations omitted). That is the obligation of the party seeking
 6 judicial review, and this burden applies equally to pro se plaintiffs.

7 D. Additional Evidence.

8 In his opening brief, Plaintiff represents that since the ALJ issued her decision, he has been
 9 awarded 15.5 "PCA hours" by the state of Nevada to assist him with bathing and personal grooming.
 10 ECF No. 16 at 5. Plaintiff presents this assertion as "additional evidence to support [his] inability
 11 to perform gainful employment." *Id.* Under sentence 6 of 42 U.S.C. § 405(g) the Court has the
 12 authority to order additional evidence be considered by the Commissioner, but only "upon a showing
 13 that there is new evidence which is material and that there is good cause for the failure to incorporate
 14 such evidence into the record in a prior proceeding." Evidence is "material" if it bears "directly and
 15 substantially on the matter in dispute." *Mayes v. Massanari*, 276 F.3d 453, 462 (9th Cir. 2001).
 16 Further, the plaintiff must "demonstrate that there is a reasonable possibility that the new evidence
 17 would have changed the outcome of the administrative hearing." *Id.*

18 Here, Plaintiff's opening brief mentions the award of "PCA hours" but provides no actual
 19 evidence of such. However, attached to Plaintiff's Reply is a three-page print out of an unspecified
 20 web page that appears to document approval by Medicaid of a "Screening To Determine The
 21 Appropriateness" of personal care services on January 24, 2025, followed by approval for 1,612
 22 units of personal care for bathing/dressing/grooming, toileting, transferring, mobility/ambulation,
 23 housekeeping, laundry, essential shopping, and meal prep. ECF No. 19 at 20-22.

24 Though this screening and subsequent award of personal care hours occurred more than one
 25 year after the ALJ's September 11, 2023 decision, this does not necessarily preclude evidence of
 26 such from being material. Many courts have found evidence dated after the final decision of the
 27 Commissioner to nonetheless relate to the period before that decision. *See Baker v. Colvin*, Case
 28 No. 16-cv-00771-EMC, 2016 WL 5869944, at *4 (N.D. Cal. Oct. 7, 2016) (collecting cases). In

1 Baker, for example, the Northern District of California found that treatment records post-dating the
 2 decision of an ALJ were material because they detailed continuing treatment of the same impairment
 3 (PTSD) which was the basis of the claimant’s application and “support[ed] the opinions of
 4 examining [d]octors … to which the ALJ gave little weight.” *Id.* at 3.

5 Here, evidence that Plaintiff’s physical impairments are such that he may now require
 6 assistance with basic tasks such as bathing and grooming lends support to Dr. Robertson’s opinion
 7 that Plaintiff was limited to carrying less than one pound and was unable to bend or kneel, which the
 8 ALJ discounted. AR 41. Similarly, because a finding of disability requires a finding that a claimant
 9 is unable to work as a result of a medically determinable impairment “which has lasted or can be
 10 expected to last for a continuous period of not less than twelve months,” 42 U.S.C. § 1382c(a)(3)(A),
 11 there is a reasonable likelihood the ALJ’s decision would have been different had she been presented
 12 evidence that, more than twelve months after her decision, Plaintiff would require assistance to
 13 perform basic self-care. Indeed, not only did Plaintiff indicate during his hearing that “medical
 14 professionals … say [he] should be getting assistance showering,” AR 79-80, but the record indicates
 15 Plaintiff needed help with bathing, toileting, and dressing as far back as 2014. AR 854. Although
 16 the alleged onset of Plaintiff’s disability was not until 2020, evidence that Plaintiff required such
 17 assistance at various periods both before and after the ALJ’s decision is material to whether
 18 Plaintiff’s limitations could have been expected to last for at least twelve months as of the time of
 19 the ALJ’s decision.

20 Further, although the Commissioner argues Plaintiff “failed to show good cause for the
 21 failure to incorporate this evidence earlier in a prior proceeding,” ECF No. 18 at 9, courts have
 22 repeatedly found the fact that medical records did not exist at the time of an ALJ’s decision to
 23 establish good cause for their late submission. *See, e.g., Burton v. Heckler*, 724 F.2d 1415, 1418
 24 (9th Cir. 1984) (“We hold that the fact that the evidence did not exist at the time of the ALJ’s decision
 25 establishes good cause for [claimant]’s failure to introduce it before the ALJ.”).

26 Based on the new evidence provided, the Court finds Plaintiff’s case is properly remanded
 27 for purposes of requiring the ALJ to consider this evidence together with other related material
 28 evidence Plaintiff may wish to present.

V. Order

IT IS HEREBY ORDERED that Plaintiff's Complaint seeking reversal of the ALJ's decision (ECF No. 6) is GRANTED and the Commissioner's decision is REVERSED, and this case is REMANDED pursuant to sentence four of 42 U.S.C. § 405(g) for further administrative proceedings consistent with this Order.

IT IS FURTHER ORDERED that the Clerk of Court shall close this case and enter judgment accordingly.

Dated this 18th day of July, 2025.

Elayna J. Youchah
ELAYNA J. YOUCRAH
UNITED STATES MAGISTRATE JUDGE